

## Department of Veterans Affairs

## §21.274

(b) *Selection criteria.* Whenever feasible, VA will give priority to veterans with service-connected disabilities rated at 30 percent or more disabling in selection of recipients of this allowance. VA shall consider the following additional selection criteria:

(1) Need of the veteran to augment the subsistence allowance or payment made by the Chapter 30 rate;

(2) Motivation of the veteran; and

(3) Compatibility of the work assignment with the veteran's physical condition.

(Authority: 38 U.S.C. 3104(a)(4), 3108(f), 3485)

(c) *Utilization.* Veteran-student services may be utilized in connection with:

(1) VA outreach service program as carried out under the supervision of a VA employee;

(2) Preparation and processing of necessary VA papers and other documents at educational institutions, regional offices or other VA facilities;

(3) Hospital and domiciliary care and medical treatment at VA facilities; and

(4) Any other appropriate activity of VA.

(d) *Rate of payment.* (1) In return for the veterans' agreement to perform services for VA totaling 25 times the number of weeks contained in an enrollment period, VA will pay an allowance equal to the higher of:

(i) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times the number of hours the veteran has agreed to work; or

(ii) The hourly minimum wage under comparable law of the State in which the services are to be performed times the number of hours the veteran has agreed to work.

(2) VA will pay proportionately less to a veteran who agrees to perform a lesser number of hours of services.

(Authority: 38 U.S.C. 3104(a)(4), 3485)

(e) *Payment in advance.* VA will pay in advance an amount equal to 40 percent of the total amount payable under the contract (but not more than an amount equal to 50 times the applicable hourly minimum wage).

(Authority: 38 U.S.C. 3104(a)(4), 3485)

(f) *Veteran reduces rate of training.* In the event the veteran reduces his or her training to less than three-quarter time before completing an agreement, the veteran, with the approval of the Director of the VA field station, or designee, may be permitted to complete the portions of an agreement in the same or immediately following term, quarter or semester in which the veteran ceases to be at least a three-quarter time student.

(Authority: 38 U.S.C. 3104(a)(4), 3485)

(g) *Veteran terminates training.* If the veteran terminates all training before completing an agreement, VA:

(1) Will permit him or her to complete the portion of the agreement represented by the sum of money VA has advanced to the veteran for which he or she has not performed any services; but

(2) Will not permit him or her to complete that portion of an agreement for which no advance has been made.

(h) *Indebtedness for unperformed service.* (1) If the veteran has received an advance for hours of unperformed service that remain after application of paragraphs (f) and (g) of this section, that advance:

(i) Will be a debt due the United States; and

(ii) Will be subject to recovery in the same manner as any other debt due the United States;

(2) For each hour of unperformed service, the amount of indebtedness shall equal the hourly wage upon which the contract was made.

(i) *Survey.* VA will conduct an annual survey of its regional offices to determine the number of veterans whose services can be utilized effectively.

(Authority: 38 U.S.C. 3104(a)(4), 3485)

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985; 54 FR 4284, Jan. 30, 1989, as amended at 56 FR 14648, Apr. 11, 1991; 57 FR 57108, Dec. 3, 1992; 62 FR 17709, Apr. 11, 1997]

### §21.274 Revolving fund loan.

(a) *Establishment of revolving fund loan.* A revolving fund is established to provide advances to veterans who would otherwise be unable to begin or continue in a rehabilitation program without such assistance.

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(b) *Definition.* The term *advance* means a non-interest loan from the revolving fund.

(c) *Eligibility.* A veteran is eligible for an advance if the following conditions are present:

(1) An Individualized Written Rehabilitation Plan, Individualized Extended Evaluation Plan, or Individualized Independent Living Plan has been prepared; and

(2) The veteran and VA staff agree on the terms and conditions of the plan.

(d) *Advance conditions.* (1) An advance may be approved when the following conditions are met:

(i) The purpose of the advance is clearly and directly related to beginning, continuing, or reentering a rehabilitation program;

(ii) The veteran would otherwise be unable to begin, continue or reenter his or her rehabilitation program;

(iii) The advance does not exceed either the amount needed, or twice the monthly subsistence allowance for a veteran without dependents in full-time institutional training specified in § 21.260(b); and

(iv) The veteran has elected, or is in receipt of, subsistence allowance.

(2) An advance may not be made to a veteran who meets conditions described in paragraph (d)(1) of this section if the veteran:

(i) Has not fully repaid an advance;

(ii) Does not agree to the terms and conditions for repayment; or

(iii) Will not be eligible in the future for payments of pension, compensation, subsistence allowance, educational assistance, or retired pay.

(e) *Determination of the amount of the advance.* (1) If the conditions described in paragraphs (c) and (d)(2) of this section are met, a counseling psychologist or vocational rehabilitation specialist in the VR&E Division will:

(i) Document the findings; and

(ii) Determine the amount of the advance.

(2) Loans will be made in multiples of \$10.

(f) *Repayment*—(1) *Offset possible.* The amount advanced will be repaid in monthly installments from future VA payments for compensation, pension, subsistence allowance, educational assistance allowance or retired pay.

(i) Repayment will begin on the earlier of the following dates:

(A) The first day of the month following the month in which the advance is granted; or

(B) The first day of the month after receipt of the advance in which the veteran receives a subsistence allowance

(ii) The VR&E staff person who approves the advance will determine the rate of repayment.

(iii) The monthly rate of repayment may not be less than 10 percent of the amount advanced unless the monthly benefit against which the advance is being offset is less than that amount.

(2) *Offset not possible.* If the amount advanced cannot be repaid from the benefits cited in paragraph (f)(1) of this section because the veteran is not in receipt of any of these benefits, collection of the amount due will be made in the same manner as any other debt payable to VA.

(Authority: 38 U.S.C. 3112)

[49 FR 40814, Oct. 18, 1984, as amended at 76 FR 45705, Aug. 1, 2011]

## § 21.276 Incarcerated veterans.

(a) *General.* The provisions contained in this section describe the limitations on payment of subsistence allowance and charges for tuition and fees for:

(1) Incarcerated veterans;

(2) Formerly incarcerated veterans in halfway houses; and

(3) Incarcerated and formerly incarcerated veterans in work release programs.

(Authority: 38 U.S.C. 3108(g), 3680(a))

(b) *Definition.* The term *incarcerated veteran* means any veteran incarcerated in a Federal, State, or local prison, jail, or other penal institution for a felony. It does not include any veteran who is pursuing a rehabilitation program under Chapter 31 while residing in a halfway house or participating in a work-release program in connection with such veteran's conviction of a felony.

(c) *Subsistence allowance not paid to an incarcerated veteran.* A subsistence allowance may not be paid to an incarcerated veteran convicted of a felony,